

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 301 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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DITALIA NAYAKADA DHANUK (MINOR}

Versus

STATE OF GUJARAT

Appearance:

MR MA KALATHIL for Petitioner

Mr.S.A.Pandya, LAPP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 23/07/97

ORAL JUDGEMENT

Rule. Mr.S.A.Pandya, ld.APP waives service.

2. On earlier occasion, the petitioner was directed to produce xerox copy of the result of the ossification test and the medical opinion given with regard to it. Today it has been produced. So far as elbow joint is concerned, on radiological examination, it is revealed that the ossification has taken place partially. In cases where the accused are claiming benefit of Juvenile Justices Act and if radiological examination is of the aforesaid nature, based upon which the Doctor also says that the age of the petitioner accused would be around 17 years, then it becomes one of those marginal cases.

3. The date of the incident is 27-7-1996 and the said test has been carried out on 20-12-1996. This will, therefore, further reduce the age and almost make it 16 1/2 years. As if this is not enough, by following the due procedure, the birth-date of the petitioner-acused, which was not recorded in the register kept for the

purpose under Death and Birth Registration Act, under the orders of the concerned Magistrate, is got registered and now the birth-date recorded therein as per the Certificate page 13(Annexure D) is 31-3-1981. On earlier occasion, no doubt, the petitioner had applied before the learned Addl. Sessions Judge of Baroda, camp at Choteudepur claiming that he be dealt with under the Juvenile Justices Act. At that time, the birth registration certificate was not there at all and could not have been, because it has been obtained after the said order was passed on 18-1-1997. After the said certificate was obtained, when the petitioner applied again, the learned Additional Judge, by order dated 18-6-1997, referred to the earlier order and mainly because the birth has been got registered after the registration of offence, he has not given much credence to it. However, this is not the only evidence before the Court. The said ossification test on 20-12-1996 also indicates that the accused is likely to be 16 years of age and this is not corroborated by the said birth certificate. It should not be lost sight that the accused is one of the Tribals and by very nature, his parents who are also Tribals, would not have bothered to get the birth registered though occasionally, they do get it registered as the learned Sessions Judge has noted in his order dated 18-1-1997 that the birth of the elder brother of the accused is registered and this elder brother is also a co-accused of the petitioner. Therefore, one can certainly argue that the birth of this accused also could have been got registered similarly. However, if it has not been done earlier, after following the due procedure if that has been done and coupled with that when the medical certificate based on ossification test reveals the position, as noted above, in my opinion, the petitioner should be treated as a Juvenile and accordingly he should be dealt.

4. I, therefore, hold that the petitioner has succeeded in making out a case of he being below the age of 16 years at the time of incident and the request that he be dealt with under the provisions of the Juvenile Justices Act is therefore, justified. The said request is, therefore, granted. The order of the learned Additional Judge in Sessions Case No.42 of 1996 given on 18-6-1997 is hereby set aside. The said application stands allowed accordingly and the case of the petitioner -accused shall be sent to the Juvenile Court at Choteudepur. Rule is made absolute. D.S. permitted.
